

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON**

1400 Eye Street, N.W.
Suite 450
Washington, D.C. 20005,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, for injunctive, declaratory and other appropriate relief. Plaintiff seeks the release of records from three Department of Justice ("DOJ") components -- the Criminal Division, the Federal Bureau of Investigation ("FBI"), and the Executive Office of U.S. Attorneys ("EOUSA") -- concerning the now closed investigation of Rep. Jerry Lewis (R-CA). Plaintiff is statutorily entitled to the disclosure of the records it seeks. Notwithstanding that entitlement, defendant has improperly withheld the requested records.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction

over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 2201(a) and 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW seeks to empower citizens to have an influential voice in government decisions and in the governmental decision-making process through the dissemination of information about public officials and their actions. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of its research, CREW uses government records made available to it under the FOIA.

4. Defendant DOJ is an agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 702. DOJ is the federal agency with possession and control of the requested records and is responsible for fulfilling plaintiff’s FOIA requests. The Criminal Division, the FBI, and the EOUSA are components of defendant DOJ.

DOJ’s Investigation of Rep. Jerry Lewis

5. Rep. Jerry Lewis, the former chairman and ranking member of the House Appropriations Committee, was the subject of a criminal investigation conducted by DOJ. Specifically, DOJ investigated allegations that Rep. Lewis improperly steered millions of dollars in earmarks for clients of lobbying firms managed by former Rep. Bill Lowery (R-CA), many of whom made substantial contributions to Rep. Lewis’s campaign committee and his political action committee. DOJ also investigated allegations that Rep. Lewis improperly helped secure government contracts for donors. The U.S. Attorney’s Office for the Central District of

California notified Rep. Lewis in December 2010 that DOJ had concluded its investigation of him and declined to prosecute him.

Plaintiff's FOIA Requests

6. By letters dated January 24, 2011, and delivered by facsimile to the Criminal Division, FBI, and EOUSA, plaintiff requested under the FOIA the following agency records (including, but not limited to, electronic records and information, audiotapes, videotapes and photographs):

[A]ll records related to investigations conducted by DOJ and the Federal Bureau of Investigation ("FBI") of Rep. Jerry Lewis (R-CA) that are not covered by grand jury secrecy pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, including but not limited to DOJ's decision not to bring criminal charges against him.

7. On information and belief, the Criminal Division, FBI, and EOUSA received plaintiff's letters described in ¶ 6 by facsimile on January 24, 2011.

Defendant's Treatment of Plaintiff's FOIA Requests

The Criminal Division

8. By letter to plaintiff dated February 1, 2011, the Criminal Division acknowledged receipt of plaintiff's FOIA request and assigned it file number 201100063F.

9. By letter to plaintiff dated March 3, 2011, the Criminal Division informed plaintiff it had located one box of responsive records, all of which were being withheld in their entirety under 5 U.S.C. §§ 552(b)(3), (5), (6), and (7)(C). The Criminal Division advised plaintiff of its right to appeal that determination to DOJ's Office of Information Policy ("OIP").

10. By letter to OIP dated March 18, 2011, plaintiff appealed the determination of the Criminal Division to withhold in their entirety all records responsive to plaintiff's FOIA request.

11. By letter to plaintiff dated April 4, 2011, OIP acknowledged receipt of plaintiff's appeal described in ¶ 10. To date, OIP has not responded to plaintiff's appeal.

12. Defendant DOJ has failed to issue a decision on plaintiff's appeal within the statutory time limit and plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to the Criminal Division.

The FBI

13. By letter to plaintiff dated February 3, 2011, the FBI acknowledged receipt of plaintiff's FOIA request, assigned it FOIPA Request No. 1160654-000, and indicated that without express authorization and consent of "the third party" – presumably Rep. Lewis – any release of information to plaintiff would violate the Privacy Act. The FBI further asserted the requested records are exempt from disclosure under the FOIA on privacy grounds. The FBI advised plaintiff of its right to appeal that determination to OIP.

14. By letter to OIP dated February 24, 2011, plaintiff appealed the determination of the FBI to withhold in their entirety all records responsive to plaintiff's FOIA request.

15. By letter to plaintiff dated March 7, 2011, OIP acknowledged receipt of plaintiff's appeal described in ¶ 14. To date, OIP has not responded to plaintiff's appeal.

16. Defendant DOJ has failed to issue a decision on plaintiff's appeal within the statutory time limit and plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to the FBI.

EOUSA

17. By form letter to plaintiff dated February 1, 2011, EOUSA acknowledged receipt of plaintiff's FOIA request, assigned it Request Number 2011-199, and indicated that without express authorization and consent of "the third party" – presumably Rep. Lewis – any release of information to plaintiff would violate the Privacy Act. EOUSA further asserted the requested records are exempt from disclosure under the FOIA on privacy grounds. EOUSA advised plaintiff of its right to appeal that determination to OIP.

18. By letter to OIP dated February 24, 2011, plaintiff appealed the determination of EOUSA to withhold in their entirety all records responsive to plaintiff's FOIA request.

19. By letter to plaintiff dated March 11, 2011, OIP acknowledged receipt of plaintiff's appeal described in ¶ 18. To date, OIP has not responded to plaintiff's appeal.

20. Defendant DOJ has failed to issue a decision on plaintiff's appeal within the statutory time limit and plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to the EOUSA.

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

21. Plaintiff repeats and re-alleges paragraphs 1-20.

22. Defendant DOJ has wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for rendering decisions on plaintiff's appeals of the responses of the Criminal Division, the FBI, and EOUSA to plaintiff's FOIA requests.

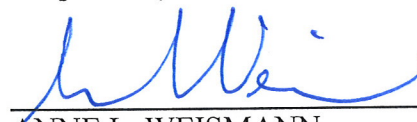
Requested Relief

WHEREFORE, plaintiff prays that this Court:

- (1) Order defendant DOJ and its components the Criminal Division, the FBI, and EOUSA to disclose immediately and in their entireties all records responsive to plaintiff's FOIA requests submitted to the Criminal Division, the FBI, and EOUSA on January 24, 2011;
- (2) Issue a declaration that plaintiff is entitled to disclosure of the requested records;
- (3) Provide for expeditious proceedings in this action;

- (4) Award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- (5) Grant such other relief as the Court may deem just and proper.

Respectfully submitted,



ANNE L. WEISMANN

(D.C. Bar No. 298190)

MELANIE SLOAN

(D.C. Bar No. 434584)

Citizens for Responsibility and
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Dated: June 2, 2011

Counsel for Plaintiff